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No. 98-1667

In the Supreme Court of the United States

DAVID H. BARAL, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE UNITED STATES

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QUESTION PRESENTED

Whether a remittance of estimated taxes or of taxes withheld from wages is a payment of tax that is subject to the limitation on tax refunds set forth in Section 6511(b) of the Internal Revenue Code, 26 U.S.C. 6511(b).

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OPINIONS BELOW

The judgment and memorandum of the court of appeals (Pet. App. A1-A4) and the opinion of the district court (Pet. App. A5-A10) are not officially reported.

JURISDICTION

The judgment of the court of appeals was entered on January 20, 1999. The petition for a writ of certiorari was filed on April 13, 1999. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTES AND REGULATIONS INVOLVED

The relevant portions of Sections 6151, 6315, 6401, 6402, 6511, and 6513 of the Internal Revenue Code, 26 U.S.C. 6151, 6315, 6401, 6402, 6513, and of 26 C.F.R. 301.6402-3 are set forth at App., *infra*, 1a-7a.

STATEMENT

1. During 1988, petitioner's employer withheld a total of $4104 in federal income taxes from petitioner's wages and remitted those taxes to the United States. In January 1989, petitioner made an additional remittance to the United States of $1100 as an estimated tax for the fourth quarter of 1988. Petitioner thereafter sought and was granted an extension of time to August 15, 1989, in which to file his 1988 income tax return. He did not file his return for that year, however, until June 1, 1993 (Pet. App. A3, A5-A6).

On the untimely 1988 return that petitioner filed in 1993, he claimed that his 1988 taxes had been overpaid by $1175 and sought to have that overpayment credited against his outstanding tax obligations for 1989. The Internal Revenue Service assessed the tax liability reported by petitioner on his belated 1988 return but denied the requested credit of the overpayment (Pet. App. A3, A6). The Service concluded that the requested credit was barred by Section 6511(b) of the Internal Revenue Code, which specifies that "the amount of [any] credit or refund shall not exceed the portion of the tax paid within the period, immediately preceding the filing of the claim, equal to 3 years plus the period of any extension of time for filing the return." 26 U.S.C. 6511(b)(2)(A). Because petitioner's refund claim was filed after the period described in Section 6511(b)(2)(A) had expired, no credit or refund could be allowed on the untimely claim.

2. Petitioner thereafter commenced this refund suit in federal district court. Petitioner claimed that the withheld and estimated tax remittances made with respect to his 1988 liability were "deposits" rather than "payments" of tax and that the statutory limitations on

the recovery of taxes based upon the time "the tax [was] paid" (26 U.S.C. 6511(b)(2)(A)) therefore did not bar his refund claim (Pet. App. A3, A6).

The district court rejected petitioner's claim. The court held that the remittances of withholding and estimated taxes were "payments" of tax that were subject to the statute of limitations. Because the refund claim was not made within the period permitted under Section 6511, the court held that petitioner's claim was barred by the plain text of the statute (Pet. App. A8).[1]

In so ruling, the court rejected petitioner's reliance on the decision of this Court in *Rosenman* v. *United States*, 323 U.S. 658 (1945). The court explained (Pet. App. A8) that *Rosenman* is premised on the existence of an "interim arrangement" between the taxpayer and the Internal Revenue Service under which money is remitted and "held not as taxes duly collected * * * but as a deposit in the nature of a cash bond" (323 U.S. at 662). In the present case, petitioner cannot "point to any analogous arrangement between himself and the IRS in which he indicated that he wished [the] remittance to be held as cash bond or 'deposit'" (Pet. App. A8).

3. The court of appeals affirmed (Pet. App. A1-A4). The court held that the contention that the remittances of withheld and estimated taxes were deposits rather than payments of tax is "foreclosed by the plain language of the statute" (*id.* at A3):

> Section 6513(b)(1) provides that any amount of tax withheld from wages is "deemed to have been paid" by the recipient of the income on April 15 of

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[1] Petitioner's tax return, which functioned as his claim for credit or refund, was filed more than four years after the remittances of withheld and estimated taxes (Pet. App. A6).

> the following year. Similarly, § 6513(b)(2) provides that any amount paid as estimated income tax shall be "deemed to have been paid" on April 15 of the following year.

The court concluded that the remittances of withheld and estimated taxes "were payments as a matter of law" under the plain text of these statutory provisions (Pet. App. A3). The court explained that the rationale of *Rosenman* does not apply to a case, such as the present one, which involves a "statutorily defined payment" rather than a consensual deposit arrangement (*id.* at A4).

DISCUSSION

The court of appeals correctly held that a withholding tax remittance and a quarterly estimated tax payment constitute payments of tax that are governed by the statutory limitations on recovery set forth in Section 6511 of the Internal Revenue Code. Such remittances are not made under the type of consensual deposit arrangement addressed by this Court in *Rosenman* v. *United States*, 323 U.S. 658 (1945).

As the petition correctly notes, however, the courts of appeals have long been in disarray in their interpretation and application of *Rosenman*. In particular, the decision in the present case is in direct conflict with the holding of the Fifth Circuit in *Harden* v. *United States*, 76 A.F.T.R. 2d (P-H) 95-7980 (Nov. 30, 1995), that estimated tax remittances made prior to assessment are merely "deposits," not payments of tax.[2] This

[2] In *Harden*, the Fifth Circuit held that an estimated tax payment submitted with an application for an extension of time for the filing of a return is only a "deposit," and not a "payment" of tax, under the binding precedents of that circuit. In *Thomas* v. *Mercantile National Bank*, 204 F.2d 943 (1953), and *Ford* v. *United States*, 618 F.2d 357 (1980), the Fifth Circuit interpreted *Rosenman* to signify that "an amount remitted before an assessment of tax is, as a matter of law, a deposit" rather than a payment of tax. *Harden* v. *United States*, 76 A.F.T.R. 2d (P-H) at 95-7981. Especially in view of the fact that the decision in *Harden* relied on preexisting circuit precedent, the fact that the *Harden* decision is not officially reported is of "no weight in [this Court's] decision to review the case" (*Commissioner* v. *McCoy*, 484 U.S. 3, 7 (1987)).

longstanding confusion and uncertainty among the courts of appeals concerning the proper application of the principles established in *Rosenman* can, of course, be resolved only by this Court. The proper application of the statutory provisions that limit tax refunds is a matter of substantial importance that gives rise to a significant volume of litigation. Review by this Court of this continuing conflict among the circuits is therefore warranted.

1. a. Section 6511(b) of the Internal Revenue Code imposes "substantive limitations on the amount of recovery" on tax refund claims. *United States* v. *Brockamp*, 519 U.S. 347, 352 (1997). These substantive limitations are set forth in "unusually emphatic form." *Id.* at 350. When, as in the present case, a refund claim is filed within three years of the filing of the return, the statute specifies that (26 U.S.C. 6511(b)(2)(A)):

> the amount of the credit or refund shall not exceed the portion of the tax paid within the period, immediately preceding the filing of the claim, equal to 3 years plus the period of any extension of time for filing the return * * * .

Because all of petitioner's withholding and estimated tax remittances were made more than four years before his return and refund claim were filed (see note 1,

supra), the court of appeals correctly held that none of those payments may be refunded "under the plain language of the statute" (Pet. App. A3).

b. Petitioner errs in claiming that his withholding and estimated tax payments should be treated as "deposits" rather than as "payments" of tax and that the statutory limitations on the recovery of taxes "paid" to the United States (26 U.S.C. 6511(b)(2)(A)) therefore do not bar his claim in this case. The distinction that petitioner posits between tax "deposits" and tax "payments" finds no support in the Internal Revenue Code. The Code, which strictly regulates tax refund suits "in a highly detailed technical manner" (*United States* v. *Brockamp*, 519 U.S. at 350), contains no mention whatever of tax "deposits." Instead, in language that "cannot easily be read as containing implicit exceptions" (*ibid.*), Section 6511(b) comprehensively establishes unqualified limitations on the recovery of any taxes "paid" in any manner to the United States.

In *Rosenman*, however, the Court drew a distinction between a remittance tendered as a "payment" of tax—which triggers the limitations applicable to tax refund suits—and a remittance tendered as a "deposit" —which is not subject to those limitations.[3] Based upon what the Court concluded was then-prevailing administrative practice, the Court held in *Rosenman* that a "deposit" occurs when a remittance is tendered to the

[3] As the Federal Circuit stated in *New York Life Insurance Co.* v. *United States*, 118 F.3d 1553, 1556 (1997), cert. denied, 523 U.S. 1094 (1998):

> The Code does not deal with deposits of taxes or provide procedures for their making or recovery. The concept of a "deposit" of taxes, which is not a payment, stems from the Supreme Court's decision in *Rosenman* * * * .

government as part of an "interim arrangement" to cover "future" contingencies and is not tendered to "discharge * * * a liability" or to "pay one that was asserted." 323 U.S. at 662.[4] The Court stated in *Rosenman* that the government had given a "practical construction * * * [t]o such arrangements" and "does not consider" such advances from the taxpayer to constitute "tax payments." *Ibid.* The Court concluded that it merely "interpret[s] a business transaction according to its tenor" to recognize that "receipt by the Government of moneys under such an arrangement" constitutes a "deposit" rather than a "payment" of tax. *Id.* at 662, 663.[5] The rationale of *Rosenman* is thus that a "deposit" (rather than a "payment") occurs when the taxpayer and the government have expressly or impliedly agreed to a "business transaction" or "arrangement" under which the remittance is tendered by the taxpayer, and accepted and treated by the government, as a "deposit * * * in the nature of a cash bond." *Id.* at 662.

[4] The Court reasoned in *Rosenman* that a taxpayer would enter into such a "deposit arrangement" to stop the running of penalties and interest and that the government, in exchange, would thereby obtain a "cash bond for the payment of taxes thereafter found to be due." 323 U.S. at 662.

[5] In *Rosenman*, unlike in the present case, the remittance had been accompanied by a letter stating that it was made "under protest and duress, and solely for the purpose of avoiding penalties and interest, since it is contended by the [taxpayer] that not all of this sum is legally or lawfully due." 323 U.S. at 660. The Service placed the remittance in *Rosenman* in a non-interest bearing "suspense account" to the credit of the estate. It was in this context that the Court concluded in *Rosenman* that an implied "business transaction" or "arrangement" had been made between the taxpayer and the government to treat the remittance as a "deposit * * * in the nature of a cash bond." *Id.* at 662.

In the present case, however, there was plainly no consensual deposit "arrangement" between the taxpayer and the government of the type described by the Court in *Rosenman*. See note 5, *supra*. Indeed, there were no communications of any type between the taxpayer and the government concerning the treatment to be given these remittances. Moreover, the statutes under which the remittances were made specify that any "tax withheld from wages" or "paid as estimated income tax" for any year "shall be 'deemed to have been paid' on April 15 of the following year" (Pet. App. A3, quoting 26 U.S.C. 6513(b)(1)-(2)). As the court of appeals concluded in this case, remittances of withheld and estimated taxes constitute "payments as a matter of law" under these statutory provisions (Pet. App. A3).

Following this Court's decision in *Rosenman*, the Treasury Department adopted rules that set forth the specific circumstances and conditions under which the government will accept a remittance as a consensual "deposit" rather than a "payment" of taxes (Rev. Proc. 84-58, 1984-2 C.B. 501; see also Rev. Rul. 89-6, 1989-1 C.B. 119; Rev. Proc. 82-51, 1982-2 C.B. 839). Those conditions—which include a requirement that the taxpayer expressly designate the remittance as a "deposit"—were plainly not met in this case.[6] See Pet. App. A6. In this context, there was manifestly no express nor implied-in-fact consensual "business transaction" or "arrangement" between the taxpayer and the

[6] Under the procedures specified by the Treasury, a taxpayer—typically one under audit who expects to receive an adverse determination—must expressly designate the remittance as a deposit. A deposit thus made is returnable on demand, without interest, until such time as the Service is authorized to make the assessment. Rev. Proc. 84-58, §§ 401.3, 402.1, 1984-2 C.B. at 502.

United States for a "deposit" rather than a "payment" to be made. The essential prerequisites for application of this Court's decision in *Rosenman* are thus not satisfied in this case. Petitioner's refund claim must therefore be denied because, in filing his belated claim, he failed to "conform strictly to the requirements of Congress." *Rosenman* v. *United States*, 323 U.S. at 661.

2. The courts of appeals have adopted distinct and conflicting lines of authority in their effort to interpret and apply this Court's decision in *Rosenman*.

a. The most extreme position, which most courts have rejected, is that taken by the Fifth Circuit. That circuit holds that any remittance made prior to the formal assessment of the tax "is, as a matter of law, a deposit" rather than a payment of tax. *Harden* v. *United States*, 76 A.F.T.R. 2d (P-H) at 95-7981. In *Harden*, the court applied that rationale in holding, in direct conflict with the decision in the present case, that an estimated tax remittance "forwarded to the IRS before an assessment of tax is to be considered a deposit rather than a payment." *Ibid.* See also *Thomas* v. *Mercantile National Bank*, 204 F.2d 943 (5th Cir. 1953); *Ford* v. *United States*, 618 F.2d at 357.[7]

[7] The Federal Circuit has adopted a close variant of the Fifth Circuit rule. In *New York Life Insurance Co.* v. *United States*, 118 F.3d 1553, 1559 (Fed. Cir. 1997), cert. denied, 523 U.S. 1094 (1998), the court held that a remittance must be treated as a deposit "as a matter of law" when it is tendered before the tax is assessed and with an accompanying "protest" of the underlying liability. As the Seventh Circuit correctly concluded in rejecting that same contention in *Moran* v. *United States*, 63 F.3d 663, 669 (1995), however, the fact that a "protest" accompanies the remittance cannot transmute a payment into a deposit, for the Code expressly

The Fifth Circuit has reasoned that a tax liability cannot be "paid" by a remittance made before the tax is assessed because, absent an assessment, there is "no liability on the part of the taxpayer, and consequently nothing to pay." *Thomas* v. *Mercantile National Bank*, 204 F.2d at 944. That reasoning, however, is fundamentally flawed. The underlying liability to pay a tax exists independently of "assessment or notice and demand from the Secretary" (26 U.S.C. 6151(a)). An assessment is simply the administrative act of "recording the liability of the taxpayer in the office of the Secretary" (26 U.S.C. 6203).[8] As the Seventh Circuit held in *Moran* v. *United States*, 63 F.3d 663, 666-667 (1995), an "assessment" is a prerequisite for various administrative collection activities, but "the liability of the taxpayer" exists independently of, and precedes, the formal assessment of the tax. See 26 U.S.C. 6151(a) ("the person required to make such return shall, *without assessment* or notice and demand from the Secretary, *pay* such tax * * * at the time and place fixed for filing the return") (emphasis added)).[9]

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specifies that taxes may be "*paid* under protest" (26 U.S.C. 7422(b) (emphasis added)).

[8] The Internal Revenue Service generally does not make an assessment of tax until the taxpayer has filed his return and the return has been processed administratively. Under the Fifth Circuit's rule, all withholding taxes, estimated taxes, and even remittances accompanying tax returns would merely be "deposits" until the Service processes the return and makes an assessment of the amounts due.

[9] Similarly, the Code provides that a tax collection suit may be brought by the government "without assessment" of the tax. 26 U.S.C. 6501(a) (& Supp. III 1997). As this Court concluded in *Manning* v. *Seeley Tube & Box Co.*, 338 U.S. 561, 565 (1950), on the date the return is required to be filed, "the taxpayer has a positive obligation to the United States: a duty to pay its tax."

b. The rule adopted by the Fifth Circuit conflicts with the decisions of the Ninth Circuit in *Zeier* v. *Internal Revenue Service*, 80 F.3d 1360 (1996), the Seventh Circuit in *Moran* v. *United States*, 63 F.3d at 667-668 (1995), the Fourth Circuit in *Ewing* v. *United States*, 914 F.2d 499, 502-503 (1990), cert. denied, 500 U.S. 905 (1991), the Sixth Circuit in *Ameel* v. *United States*, 426 F.2d 1270, 1273 (1970), the Third Circuit in *Fortugno* v. *Commissioner*, 353 F.2d 429 (1965), cert. dismissed, 385 U.S. 954 (1966), and the Second Circuit in *Lewyt Corp.* v. *Commissioner*, 215 F.2d 518, 522-523 (1954), judgment aff'd in part and rev'd in part on another issue, 349 U.S. 237 (1955). These courts have consistently rejected the conclusion of the Fifth Circuit that "there can be no payment of tax before the IRS makes a formal assessment of the * * * tax liability" (*Zeier* v. *Internal Revenue Service*, 80 F.3d at 1364)). They have held instead that the "facts and circumstances" of each case must be considered in determining whether the parties intended the remittance to be treated as a payment or as a deposit.[10]

Other courts, including the court of appeals in the present case, have adopted still another method of analysis that looks to the specific statutory provision under which the remittances were made to determine

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[10] In *United States* v. *Dubuque Packing Co.*, 233 F.2d 453 (1956), the Eighth Circuit followed the Fifth Circuit's decision in *Mercantile National Bank* in holding that a remittance held by the IRS in a suspense account did not constitute a payment until the tax was formally assessed. In *Essex* v. *Vinal*, 499 F.2d 226 (8th Cir. 1974), cert. denied, 419 U.S. 1107 (1975), however, without discussing its prior decision in *Dubuque Packing Co.*, the Eighth Circuit held that a remittance of estimated taxes prior to assessment constituted a payment when the taxpayer and the IRS treated it as such.

whether the "remittances were payments as a matter of law" (Pet. App. A3). These courts have held that certain specific types of remittances—such as estimated tax payments and wage withholdings—constitute a "payment" rather than a "deposit" as a matter of law, even in the absence of any prior assessment of the tax and even in the face of a contrary expression of intent by the taxpayer.[11] See, *e.g.*, *Ertman* v. *United States*, 165 F.3d 204 (2d Cir. 1999) (estimated taxes); *Ott* v. *United States*, 141 F.3d 1306, 1309–1310 (9th Cir. 1998) (same); *Gabelman* v. *Commissioner*, 86 F.3d 609, 612–613 (6th Cir. 1996) (same); *Weigand* v. *United States*, 760 F.2d 1072 (10th Cir. 1985) (same); *Ehle* v. *United States*, 720 F.2d 1096 (9th Cir. 1983) (wage withholdings). These decisions have concluded that the question whether the taxpayer "intended" withheld taxes or estimated taxes to be a "deposit" is irrelevant because Section 6513(b) of the Code specifies that such taxes are "deemed to be paid" on the date the return for that year is due. See 26 U.S.C. 6513(b)(1)-(2); *Ott* v. *United States*, 141 F.3d at 1309-1310; *Ehle* v. *United States*, 720 F.2d at 1097; note 11, *supra*. As the court of appeals stated in this case, Section 6513(b) "conclusively determines that these remittances [of withholding and estimated taxes] were payments as a matter of law" (Pet. App. A3).[12]

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[11] The Ninth Circuit held in *Zeier* v. *Internal Revenue Service*, 80 F.3d at 1364, that a taxpayer's ostensible intent to make a deposit can not "defeat a statutory mandate" that the remittance be regarded as a payment of tax.

[12] Petitioner raises three additional arguments on the merits, each of which lacks substance. Petitioner first attempts to distinguish between "payments of withholding tax or estimated tax" and "payments of *income* tax" (Pet. 12). Withholding and estimated taxes, however, are simply devices for collecting income taxes, and they are refundable only to the extent that they result in an overpayment of income tax. See, *e.g.*, 26 U.S.C. 6315 ("[p]ayment of the estimated tax * * * shall be considered payment on account of the income taxes imposed by subtitle A for the taxable year"); 26 U.S.C. 31(a)(1) (amount withheld as tax from wages is credited against income tax liability).

Petitioner erroneously asserts (Pet. 17) that application of the statutory refund limitations to his claim violates due process of law. As this Court stated in *United States* v. *Dalm*, 494 U.S. 596, 609-610 n.7 (1990), "[t]he very purpose of statutes of limitations in the tax context is to bar the assertion of a refund claim after a certain period of time has passed, without regard to whether the claim would otherwise be meritorious. That a taxpayer does not learn until after the limitations period has run that a tax was paid in error, and that he or she has a ground upon which to claim a refund, does not operate to lift the statutory bar."

Petitioner further errs in relying (Pet. 18-19) on Section 6513(d), which specifies that an overpayment of estimated tax that is "claimed as a credit" in one year "shall be considered as a payment of the income tax for the succeeding taxable year" (26 U.S.C. 6513(d)). That statute does not convert an untimely claim for a credit in one year into a timely "payment" of tax for the next year. Since, under Section 6511(b)(2)(A), petitioner had no lawful right to a credit for 1988, there was no credit available from that year to apply to the following year's taxes under Section 6513(d).

3. The proper classification of a remittance as a payment or deposit is a question of recurring importance on which the courts of appeals have adopted conflicting analyses that have yielded inconsistent results. The Internal Revenue Service "processes more than 200 million tax returns each year [and] issues more than 90 million refunds." *United States* v. *Brockamp*, 519 U.S. at 352. These millions of taxpayers, and the Service as well, need a secure basis for understanding the consequences that follow from remittances of taxes to the United States. Only this Court can resolve the recurring conflict that exists among the courts of

appeals on the application of this Court's *Rosenman* decision to these fundamental issues of tax administration. Resolution of that conflict by this Court is needed to avoid continuing uncertainty and disparate application of the revenue laws.[13]

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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[13] For essentially the same reasons, the United States petitioned for a writ of certiorari from the Federal Circuit's decision in *New York Life Insurance Co.* (see note 7, *supra*), but this Court denied review. 523 U.S. 1094 (1998). The conflict in the circuits persists, however, and remains of recurring importance.

APPENDIX

1. Section 6151(a) of the Internal Revenue Code, 26 U.S.C. 6151, provides in relevant part:

> Except as otherwise provided in this subchapter, when a return of tax is required under this title or regulations, the person required to make such return shall, without assessment or notice and demand from the Secretary, pay such tax to the internal revenue officer with whom the return is filed, and shall pay such tax at the time and place fixed for filing the return (determined without regard to any extension of time for filing the return).

* * * * *

2. Section 6315 of the Internal Revenue Code, 26 U.S.C. 6315, provides in relevant part:

> Payment of the estimated income tax, or any installment thereof, shall be considered payment on account of the income taxes imposed by subtitle A for the taxable year.

3. Section 6401 of the Internal Revenue Code, 26 U.S.C. 6401, provides in relevant part:

> (a) The term "overpayment" includes that part of the amount of the payment of any internal revenue tax which is assessed or collected after the expiration of the period of limitation properly applicable thereto.

(b)(1) If the amount allowable as credits under subpart C of part IV of subchapter A of chapter 1 (relating to refundable credits) exceeds the tax imposed by subtitle A (reduced by the credits allowable under subparts A, B, and D of such part IV), the amount of such excess shall be considered an overpayment.

* * * * *

4. Section 6402 of the Internal Revenue Code, 26 U.S.C. 6402, provides in relevant part:

(a) In the case of any overpayment, the Secretary, within the applicable period of limitations, may credit the amount of such overpayment, including any interest allowed thereon, against any liability in respect of an internal revenue tax on the part of the person who made the overpayment and shall, subject to subsections (c) and (d), refund any balance to such person.

(b) The Secretary is authorized to prescribe regulations providing for the crediting against the estimated income tax for any taxable year of the amount determined by the taxpayer or the Secretary to be an overpayment of the income tax for a preceding taxable year.

* * * * *

5. Section 6511 of the Internal Revenue Code, 26 U.S.C. 6511, provides in relevant part:

(a) Claim for credit or refund of an overpayment of any tax imposed by this title in respect of which tax the taxpayer is required to file a return shall be filed by the taxpayer within 3 years from the time the return was filed or 2 years from the time the tax was paid, whichever of such periods expires the later, or if no return was filed by the taxpayer, within 2 years from the time the tax was paid. Claim for credit or refund of an overpayment of any tax imposed by this title which is required to be paid by means of a stamp shall be filed by the taxpayer within 3 years from the time the tax was paid.

(b)(1) No credit or refund shall be allowed or made after the expiration of the period of limitation prescribed in subsection (a) for the filing of a claim for credit or refund, unless a claim for credit or refund is filed by the taxpayer within such period.

(2)(A) If the claim was filed by the taxpayer during the 3-year period prescribed in subsection (a), the amount of the credit or refund shall not exceed the portion of the tax paid within the period, immediately preceding the filing of the claim, equal to 3 years plus the period of any extension of time for filing the return. If the tax was required to be paid by means of a stamp, the amount of the credit or refund shall not exceed the portion of the tax paid within the 3 years immediately preceding the filing of the claim.

(B) If the claim was not filed within such 3-year period, the amount of the credit or refund shall not exceed the portion of the tax paid during the 2 years immediately preceding the filing of the claim.

(C) If no claim was filed, the credit or refund shall not exceed the amount which would be allowable under subparagraph (A) or (B), as the case may be, if claim was filed on the date the credit or refund is allowed.

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6. Section 6513 of the Internal Revenue Code, 26 U.S.C. 6513, provides in relevant part:

(a) For purposes of section 6511, any return filed before the last day prescribed for the filing thereof shall be considered as filed on such last day. For purposes of section 6511(b)(2) and (c) and section 6512, payment of any portion of the tax made before the last day prescribed for the payment of the tax shall be considered made on such last day. For purposes of this subsection, the last day prescribed for filing the return or paying the tax shall be determined without regard to any extension of time granted the taxpayer and without regard to any election to pay the tax in installments.

(b) For purposes of Sections 6511 and 6512—

(1) Any tax actually deducted and withheld at the source during any calendar year under chapter 24 shall, in respect of the recipient of the income, be deemed to have been paid by him on the 15th day of

the fourth month following the close of his taxable year with respect to which such tax is allowable as a credit under section 31.

(2) Any amount paid as estimated income tax for any taxable year shall be deemed to have been paid on the last day prescribed for filing the return under section 6012 for such taxable year (determined without regard to any extension of time for filing such return).

(3) Any tax withheld at the source under chapter 3 shall, in respect of the recipient of the income, be deemed to have been paid by such recipient on the last day prescribed for filing the return under section 6012 for the taxable year (determined without regard to any extension of time for filing) with respect to which such tax is allowable as a credit under section 1462. For this purpose, any exemption granted under section 6012 from the requirement of filing a return shall be disregarded.

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(d) If any overpayment of income tax is, in accordance with section 6402(b), claimed as a credit against estimated tax for the succeeding taxable year, such amount shall be considered as a payment of the income tax for the succeeding taxable year (whether or not claimed as a credit in the return of estimated tax for such succeeding taxable year), and no claim for credit or refund of such overpayment shall be allowed for the taxable year in which the overpayment arises.

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7. 26 C.F.R. 301.6402-3 provides in relevant part:

(a) In the case of a claim for credit or refund filed after June 30, 1976—

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(5) A properly executed individual, fiduciary, or corporation original income tax return or an amended return (on 1040X or 1120X if applicable) shall constitute a claim for refund or credit within the meaning of section 6402 and section 6511 for the amount of the overpayment disclosed by such return (or amended return). For purposes of section 6511, such claim shall be considered as filed on the date on which such return (or amended return) is considered as filed, except that if the requirements of §301.7502-1, relating to timely mailing treated as timely filing are met, the claim shall be considered to be filed on the date of the postmark stamped on the cover in which the return (or amended return) was mailed. A return or amended return shall constitute a claim for refund or credit if it contains a statement setting forth the amount determined as an overpayment and advising whether such amount shall be refunded to the taxpayer or shall be applied as a credit against the taxpayer's estimated income tax for the taxable year immediately succeeding the taxable year for which such return (or amended return) is filed. If the taxpayer indicates on its return (or amended return) that all or part of the overpayment shown by its return (or amended return) is to be applied to its estimated income tax for its succeeding taxable year, such indication shall constitute an election to so apply such overpayment, and no interest shall be allowed on such portion of the overpayment credited and such amount

shall be applied as a payment on account of the estimated income tax for such year or the installments thereof.

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